

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Captain Robert W. Mazzone, Commander
Portsmouth Naval Shipyard
Portsmouth, NH 03804-5000

Re: Immediate Compliance Order
Docket No. CAA/ASB-ICO-2008-020

Dear CPT Mazzone:

Enclosed you will find a Clean Air Act Immediate Compliance Order which obligates Portsmouth Naval Shipyard to comply immediately with federal asbestos regulations, codified at 40 C.F.R. Part 61, Subpart M and applicable to demolition and renovation operations, commonly referred to as the "Asbestos NESHAP." EPA is issuing this Immediate Compliance Order based upon a determination that the ongoing renovation operations at Portsmouth Naval Shipyard involved violations of the Asbestos NESHAP. As specifically described in the order, EPA has determined that Portsmouth Naval Shipyard violated certain Asbestos NESHAP requirements relating to the handling, removal and disposal of regulated asbestos-containing materials.

If you wish to discuss this matter, please contact Peter Kudarauskas, Asbestos NESHAP Coordinator, at 617-918-1404, or have your legal counsel contact Hugh W. Martinez, Senior Enforcement Counsel, at 617-918-1867.

Sincerely,

Susan Studlien, Director
Office of Environmental Stewardship
EPA Region 1 (New England)

Enclosure

cc: Kenneth Plaisted, Portsmouth Naval Shipyard
Jamie Tansey, Maine Department of Environmental Protection

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:

Portsmouth Naval Shipyard
Portsmouth, NH 03804-5000

Respondent.

**IMMEDIATE
COMPLIANCE ORDER
CAA/ASB-ICO-2008-020**

This Immediate Compliance Order is issued pursuant to Section 113(a)(3) of the Clean Air Act¹ ("Act"), 42 U.S.C. § 7413(a)(3). Under Section 113(a)(3) of the Act, the Administrator of the United States Environmental Protection Agency ("EPA") has the authority to order any person subject to the Act to comply with the National Emission Standards for Hazardous Air Pollutants ("NESHAP") promulgated under Section 112 of the Act, 42 U.S.C. § 7412. The Administrator has delegated this authority to the Environmental Protection Agency's Region 1 - New England office in Boston, Massachusetts ("EPA Region 1"). The Director of the Office of Environmental Stewardship ("Director") at EPA Region 1 is authorized to issue orders under Section 113(a)(3) of the Act.

The Director hereby issues the following Findings, Determinations, and Order:

I. Definitions

The definitions included below for your convenience are among the terms defined in the federal asbestos regulations, at 40 C.F.R. Part 61, Subpart M, known as the "Asbestos NESHAP."

1. The term "owner or operator of a demolition or renovation activity" is defined at 40 C.F.R. § 61.141 to mean any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.
2. The term "facility" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums

¹ 42 U.S.C. §§ 7401 et seq., as amended.

or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site.

3. The term "demolition" is defined at 40 C.F.R. § 61.141 to mean the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.
4. The term "structural member" is defined at 40 C.F.R. § 61.141 to mean any load-supporting member of a facility, such as beams and any load-supporting walls; or any nonload-supporting member, such as ceilings and nonload-supporting walls.
5. The term "renovation" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean altering a facility or one or more facility components in any way, including the stripping or removal of RACM (regulated asbestos-containing material) from a facility component.
6. The term "facility component" is defined at 40 C.F.R. § 61.141 to mean any part of a facility including equipment.
7. The term "friable asbestos material" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any material containing more than one percent asbestos [by area], that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.
8. The term "Category I nonfriable asbestos-containing material (ACM)" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos (by area).
9. The term "Category II nonfriable asbestos-containing material (ACM)" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any material, excluding Category I nonfriable ACM, containing more than one percent asbestos (by area) that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.
10. The term "regulated asbestos-containing material (RACM)" is defined at 40 C.F.R. § 61.141 to mean (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by the Asbestos NESHAP.
11. The term "adequately wet" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then

that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

12. The term "remove" is defined at 40 C.F.R. § 61.141 to mean take out RACM or facility components that contain or are covered with RACM from any facility.
13. The term "strip" is defined at 40 C.F.R. § 61.141 to mean take off RACM from any part of a facility or facility components.
14. The term "visible emissions" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste materials.
15. The term "asbestos-containing waste materials" is defined, in pertinent part, at 40 C.F.R. § 61.141 to mean any waste that contains commercial asbestos and is generated by a source covered by the Asbestos NESHAP including, with respect to demolition and renovation operations, RACM waste and materials contaminated with asbestos.
16. The term "waste generator" is defined at 40 C.F.R. § 61.141 to mean any owner or operator of a source covered by the Asbestos NESHAP whose act or process produces asbestos-containing waste materials.

II. Regulatory and Statutory Background

1. Section 112 of the Act, 42 U.S.C. § 7412, authorizes EPA to promulgate NESHAP.
2. EPA determined that asbestos is a hazardous air pollutant and promulgated notification, work practice, and disposal requirements, codified at 40 C.F.R. Part 61, Subpart M (the "Asbestos NESHAP").
3. Sections 112(h)(1), 112(i)(3) and 112(q) of the Act, 42 U.S.C. §§ 7412(h)(1), 7412(i)(3) and 7412(q), and 40 C.F.R. § 61.05(c) and (d) prohibit any owner or operator from operating any stationary source in violation of the Asbestos NESHAP.
4. Under 40 C.F.R. § 61.145(a), prior to the commencement of the demolition or renovation, the owner or operator of a demolition or renovation activity must thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos.
5. Under 40 C.F.R. § 61.145(a), the owner or operator of a renovation operation is subject to the notification requirements of 40 C.F.R. § 61.145(b) and the procedures for asbestos emission control found at 40 C.F.R. § 61.145(c) if the combined amount of RACM to be stripped or removed from the facility being renovated is at least 260 linear feet on pipes, at least 160 square feet on other

facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously.

6. If the notification requirements apply to a demolition or renovation operation, 40 C.F.R. § 61.145(b) requires that written notification of the intent to demolish or renovate be provided to EPA. The written notice must contain the information specified at 40 C.F.R. § 61.145(b)(4) and, except as provided in 40 C.F.R. § 61.145(b)(3), must be postmarked or delivered to EPA at least ten working days before demolition or renovation begins.
7. If the procedures for asbestos emission control found at 40 C.F.R. § 61.145(c) apply to a renovation operation, each owner or operator of a demolition or renovation activity shall, among other things, (a) remove all RACM before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal (40 C.F.R. § 61.145(c)(1)); (b) adequately wet RACM during stripping from facility components remaining in place at the facility (40 C.F.R. § 61.145(c)(3)); and, (c) adequately wet all RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150 (40 C.F.R. § 61.145(c)(6)).
8. Under 40 C.F.R. § 61.150, each owner or operator of any source covered under the provisions of 40 C.F.R. §§ 61.144, 61.145, 61.146, and 61.147 shall, among other things, (a) discharge no visible emissions during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste materials generated by the source, or use one of the emission control and waste treatment methods specified in 40 C.F.R. § 61.150(a)(1)-(4) (40 C.F.R. § 61.150(a)); and, (b) deposit all asbestos-containing waste materials as soon as is practical at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154 or at an EPA-approved site that converts RACM and asbestos-containing waste materials into nonasbestos (asbestos-free) material under 40 C.F.R. § 61.155 (40 C.F.R. § 61.150(b)).

III. Findings of Fact

1. This Order addresses various renovation operations ("Renovations") that took place at the Portsmouth Naval Shipyard located at Seavey's Island in Kittery, Maine (the "Facility") since January 1, 2008.
2. The Renovations consisted of the removal of various asbestos-containing materials throughout the Facility. One or more of the Renovations resulted in the stripping, removal, dislodging, cutting, drilling, or disturbance of RACM in amounts of at least 260 linear feet (ft) on pipes, 160 square feet (ft²) on other facility components, or 35 cubic feet (ft³) off facility components where the length or area could not be measured previously.

3. On May 12 and May 13, 2008, duly authorized inspectors from EPA Region 1 conducted an inspection of the Facility.
4. On May 12, 2008, inspectors observed a 20-yard roll-off dumpster containing asbestos-containing waste at the Central Hazardous Waste Transfer Facility (Building # 357). The dumpster was approximately half full with polyethylene bags and fiberboard drums of asbestos-containing waste from Renovations. At least two, approximately 35-gallon (4.7 cubic feet) bags contained dry, friable asbestos material, which was not sealed in leak-tight containers.

IV. Determinations

1. With respect to the Renovations at the Facility, Portsmouth Naval Shipyard is an owner or operator of a demolition or renovation activity subject to the Asbestos NESHAP.
2. With respect to the Renovations at the Facility, Portsmouth Naval Shipyard failed to undertake activities required by the Asbestos NESHAP including, but not necessarily limited to, the following:
 - (a) adequately wetting all RACM, including material that has been removed or stripped; and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150, as required by 40 C.F.R. § 61.145(c)(6); and,
 - (b) properly collecting, containing, and disposing of all asbestos-containing waste materials, including RACM that has been removed or stripped, in accordance with and as required by 40 C.F.R. § 61.150.
3. Portsmouth Naval Shipyard violated Section 112 of the Act and 40 C.F.R. §§ 61.145(b), 61.145(c) and 61.150 with respect to the Renovations at the Facility, and is properly subject to an Immediate Compliance Order under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3).

V. Order

Under authority of Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), EPA hereby orders Portsmouth Naval Shipyard to comply immediately and in the future with the Asbestos NESHAP, and any amendments thereto, as required by 40 C.F.R. Part 61, Subpart M. With respect to the Renovations at the Facility, Portsmouth Naval Shipyard shall immediately comply with any and all applicable requirements of the Asbestos NESHAP including, but not necessarily limited to, the following:

1. Adequately wet all RACM, including material that has been removed or stripped, and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150; and,

2. Collect and contain all asbestos-containing waste materials at the Facility, including all RACM that has been removed or stripped, and deposit those materials as soon as is practical at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154.

VI. Enforcement

Violation of this Immediate Compliance Order and Reporting Requirement may lead to civil liability of not more than \$32,500 per day of violation under Section 113(b) and/or 113(d) of the Act, 42 U.S.C. §§ 7413(b) and/or 7413(d), and/or possible criminal liability under Section 113(c) of the Act, 42 U.S.C. § 7413(c). Even if Portsmouth Naval Shipyard complies with the Immediate Compliance Order, its issuance does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law. Such sanctions may include any administrative, civil, and/or criminal action which may be available to EPA by reason of the failure of Portsmouth Naval Shipyard, including their employees or agents, to comply with the Asbestos NESHAP.

VII. Effective Date

This Immediate Compliance Order shall become effective immediately upon receipt.

Susan Studlien, Director
Office of Environmental Stewardship
EPA Region 1

Date

cc: Captain Robert W. Mazzone, Commander
Portsmouth Naval Shipyard
Portsmouth, NH 03804-5000

Kenneth Plaisted, Head
Code 106.3, Environmental Division
Portsmouth Naval Shipyard
Portsmouth, NH 03804-5000

Jamie Tansey
Lead and Asbestos Hazard Prevention Program
Maine Department of Environmental Protection
17 State House Station
Augusta, MA 04333-0017



<http://epa.gov/region01/enforcement/asbestos/forms.html>

Last updated on Monday, June 16th, 2008.

Enforcement in New England

You are here: [EPA Home](#) [EPA New England](#) [Enforce & Assist.](#) [Enforcement](#) [Asbestos](#)
Asbestos Notification Forms

Asbestos Notification Forms

Generally, EPA and/or the appropriate state agency must be notified of any demolition or renovation project involving asbestos removal at least ten (10) working days prior to the beginning of the project.

In Connecticut, Maine, Massachusetts, and New Hampshire, the owner or operator of demolition or renovation project is allowed to file an asbestos notification only with the state (i.e., sending a separate notification form to EPA is not necessary).

In Rhode Island and Vermont, the owner or operator of such a project must file both an [EPA Notification Form \(PDF\)](#) (2 pp., 21 KB, [about PDF](#)) AND a state notification form.

The mailing address for the EPA Notification Form is:

Demo/Reno Notifications
U.S. EPA, Region 1
One Congress Street - Suite 1100 (SEP)
Boston, MA 02114-2023

For further information, please contact:

[Peter Kudarauskas \(kudarauskas.peter@epa.gov\)](mailto:kudarauskas.peter@epa.gov)
U.S. EPA, Region 1
One Congress Street - Suite 1100 (SEP)
Boston, MA 02114-2023
Tel: 617-918-1404
Fax: 617-918-0404

State asbestos notification forms may be obtained from the following websites:

- [Connecticut Department of Public Health](#) [EXIT Disclaimer](#)
- [Maine Department of Environmental Protection](#) [EXIT Disclaimer](#)
- [Massachusetts Department of Environmental Protection](#) [EXIT Disclaimer](#)
- [New Hampshire Department of Environmental Services](#) [EXIT Disclaimer](#)
- [Rhode Island Department of Public Health](#) [EXIT Disclaimer](#)
- [Vermont Department of Public Health](#) [EXIT Disclaimer](#)

List of Notifications

The most recent list of asbestos demolition and renovation notifications for RI and VT that have been submitted to EPA: 06/13/2008 (PDF) (7 pp, 1.22 MB, [About PDF](#))

